

Internal Revenue Service

Number: **202012005**
Release Date: 3/20/2020
Index Number: 482.11-13

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
 , ID No.

Telephone Number:

Refer Reply To:
CC:INTL:B06
PLR-115488-19
Date:
December 19, 2019

TY:

Legend

Taxpayer =
Company Z =
Year 1 =
Year 2 =
Year 3 =
Year 4 =
Date 1 =
Date 2 =
Date 3 =

Dear :

This responds to a letter dated June 27, 2019, submitted by your representatives. The letter requests that the Internal Revenue Service ("Service") grant Taxpayer consent to use the methods described in Treas. Reg. § 1.482-7(d)(3)(iii)(B) and Notice 2005-99, 2005-52 C.B. 1214, for measuring, timing, and identifying employee stock options, restricted shares, and restricted share units for purposes of determining the amount Taxpayer must include in its cost sharing arrangement ("CSA") as intangible development costs ("IDCs") for Year 4 and subsequent tax years.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and its representatives and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the factual information, representations, and other data may be required as part of the audit process.

FACTS

Taxpayer, a domestic corporation, was incorporated in Year 1. On Date 1 in Year 2, Taxpayer had an initial public offering and became publicly traded on an established U.S. securities market. On Date 2 in Year 3, Taxpayer and its wholly-owned subsidiary, Company Z, entered into an agreement they intended would constitute a CSA within the meaning of Treas. Reg. § 1.482-7(b). The CSA was amended on Date 3 in Year 3. Since the onset of the CSA, Taxpayer has granted stock-based compensation (“SBC”) in the form of equity awards with respect to shares of Taxpayer’s common stock to its employees, directors, and consultants. Typically, the SBC granted by Taxpayer vests over four years, and does not contain service or performance vesting restrictions other than the requirement that employment not be terminated prior to the vesting date. Taxpayer currently uses the method under Treas. Reg. § 1.482-7(d)(3)(iii)(A) (“default method”) for the measurement and timing of SBC costs to be included in its CSA as IDCs.

Taxpayer filed this request for Commissioner consent to prospectively change its method for measuring and timing SBC that Taxpayer must include as IDCs from the default method to the method described in Treas. Reg. § 1.482-7(d)(3)(iii)(B), which was extended to certain restricted shares and restricted share units by Notice 2005-99 (“elective method”).

Taxpayer has made the following representations, as stated in its submissions:

- (1) With respect to its CSA, Taxpayer is in compliance, and will remain in compliance, with all record-keeping requirements of the Internal Revenue Code of 1986, as amended, and the regulations thereunder, including Treas. Reg. § 1.482-7(k)(2)(ii). Upon request, Taxpayer will timely provide to the Commissioner records kept pursuant to such requirements.
- (2) The SBC with respect to which Taxpayer requests to use the method of measurement and timing provided in Treas. Reg. § 1.482-7(d)(3)(iii)(B)(1) and Notice 2005-99 are based on publicly traded stock within the meaning of Treas. Reg. § 1.482-7(d)(3)(iii)(B)(2).
- (3) Taxpayer's SBC is not subject to market conditions or significant post-vesting restrictions within the meaning of Financial Accounting Standards Codification Topic No. 718, “Compensation—Stock Based Compensation,” Financial Accounting Standards Board (rev. 2016) (“ASC 718”).
- (4) The service and performance vesting restrictions do not have a substantial effect on the fair value of the SBC under U.S. generally accepted accounting principles (“GAAP”) and do not result in unreasonably long vesting periods within the meaning of ASC 718.
- (5) With respect to any SBC the fair value of which is not reflected as a charge against income in audited financial statements, Taxpayer will identify such SBC

for purposes of Treas. Reg. § 1.482-7 as if the fair value of such compensation were reflected as a charge against income in audited financial statements.

- (6) Taxpayer will treat SBC granted, but not vested, during the term of the CSA, as vesting immediately before expiration or termination of the CSA for purposes of Treas. Reg. § 1.482-7, as provided for in Notice 2005-99.
- (7) For all SBC granted before the first day of the first taxable year following receipt of the Service's consent ("Legacy SBC"), Taxpayer and all controlled participants to the CSA will use the methods of measurement and timing provided in Treas. Reg. § 1.482-7(d)(3)(iii)(A) and grant date identification provided in Treas. Reg. § 1.482-7(d)(3)(ii) until all Legacy SBC has been exercised or lapsed.
- (8) For all stock options issued with respect to publicly traded stock within the meaning of Treas. Reg. § 1.482-7(d)(3)(iii)(B)(2) granted on or after the first day of the first taxable year following receipt of the Service's consent, Taxpayer and all controlled participants to the CSA will use the elective method of measurement and timing provided in Treas. Reg. § 1.482-7(d)(3)(iii)(B)(1).
- (9) For all restricted shares and restricted share units issued with respect to publicly traded stock within the meaning of Treas. Reg. § 1.482-7(d)(3)(iii)(B)(2) granted on or after the first day of the first taxable year following receipt of the Service's consent that are: a) nonvested equity shares or nonvested equity share units within the meaning of ASC 718, and b) are not subject to market conditions or significant post-vesting restrictions within the meaning of ASC 718, Taxpayer and all controlled participants to the CSA will use the elective method of measurement and timing provided in Treas. Reg. § 1.482-7(d)(3)(iii)(B)(1) and Notice 2005-99.
- (10) Taxpayer will amend its CSA to elect the elective method of measurement and timing within 60 days of receiving the Commissioner's consent to change methods as requested.

LAW

Measurement and Timing of SBC Related to Intangible Development

Treas. Reg. § 1.482-7(d)(3)(iii)(A) provides the default method for measurement and timing of SBC IDCs as follows:

Except as otherwise provided in this paragraph (d)(3)(iii), the cost attributable to stock-based compensation is equal to the amount allowable to the controlled participant as a deduction for federal income tax purposes with respect to that stock-based compensation (for example,

under section 83(h)) and is taken into account as an IDC under this section for the taxable year for which the deduction is allowable.

Treas. Reg. § 1.482-7(d)(3)(iii)(B)(1) provides the alternative elective method for measurement and timing of SBC IDCs with respect to options on publicly traded stock as follows:

With respect to stock-based compensation in the form of options on publicly traded stock, the controlled participants in a CSA may elect to take into account all IDCs attributable to those stock options in the same amount, and as of the same time, as the fair value of the stock options reflected as a charge against income in audited financial statements or disclosed in footnotes to such financial statements, provided that such statements are prepared in accordance with United States generally accepted accounting principles by or on behalf of the company issuing the publicly traded stock.

Treas. Reg. § 1.482-7(d)(3)(iii)(B)(4) provides for the time and manner of making the election, in relevant part, as follows:

The election described in this paragraph (d)(3)(iii)(B) is made by an explicit reference to the election in the written contract required by paragraph (k)(1) of this section or in a written amendment to the CSA entered into with the consent of the Commissioner pursuant to paragraph (d)(3)(iii)(C) of this section.

Treas. Reg. § 1.482-7(d)(3)(iii)(C) provides, in relevant part:

[I]f controlled participants already have granted stock options that have been or will be taken into account under the general rule of paragraph (d)(3)(iii)(A) of this section, then except in cases specified in the last sentence of paragraph (d)(3)(iii)(B)(4) of this section, the controlled participants may make the election described in paragraph (d)(3)(iii)(B) of this section only with the consent of the Commissioner, and the consent will apply only to stock options granted in taxable years subsequent to the taxable year in which consent is obtained.

Notice 2005-99¹ extended the elective method to

nonvested equity shares or nonvested equity share units within the meaning of Statement of Financial Accounting Standards No. 123, "Share-Based Payment," Financial Accounting Standards Board (rev. 2004) (SFAS 123R), provided that those shares or share units: (i) constitute or

¹ Notice 2005-99 refers to the SBC rules contained in Treas. Reg. § 1.482-7(d)(2) (2003), the materially similar predecessor of the rules in Treas. Reg. § 1.482-7(d)(3) that are applicable in the present case.

are issued with respect to publicly traded stock within the meaning of § 1.482-7(d)(2)(iii)(B)(2); and (ii) are not subject to market conditions or significant post-vesting restrictions within the meaning of SFAS 123R.²

We refer to such shares and share units as “restricted shares and share units.” An election to apply the elective method to restricted shares or share units is generally made in the time and manner set forth in Treas. Reg. § 1.482-7(d)(3)(iii)(B)(4). However, the consent of the Commissioner is not required to elect the elective method for restricted shares and share units if the election is made by a written amendment to the CSA not later than the latest due date (with regard to extensions) of a Federal income tax return of any controlled participant for the first taxable year beginning after December 8, 2005.

ANALYSIS

Based on the representations Taxpayer has made, the Service grants Taxpayer prospective consent to change to the elective method for measurement and timing of employee stock options, restricted shares, or restricted share units pursuant to Treas. Reg. § 1.482-7(d)(3)(iii)(B) and Notice 2005-99 for purposes of determining the amount Taxpayer must include as IDCs. This consent is effective for 60 days from the date of this letter. Therefore, if Taxpayer chooses to adopt the elective method, it must make the written election in its CSA within 60 days from the date of this letter.

The sole purpose of this private letter ruling is to grant consent for Taxpayer to use the elective method for purposes of including SBC as an IDC that Taxpayer must share for purposes of its CSA. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter, including the CSA, or concerning the validity of any provisions within the CSA.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

² FAS 123R was amended after the publication of Notice 2005-99 by ASC 718.

Angela E. Holland
Senior Counsel, Branch 6
Office of Associate Chief Counsel (International)